

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Oct 09, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT YAKIMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LEO JOHN YALLUP,

Defendant.

CASE NO. CR23-2016JLR

ORDER

**I. INTRODUCTION**

Before the court is Defendant Leo John Yallup's motion to withdraw his guilty plea. (Mot. (Dkt. # 102).) Plaintiff the United States of America (the "Government") opposes the motion. (Resp. (Dkt. # 106).) The court has considered the parties' submissions, the relevant portions of the record, and the applicable law. Being fully advised,<sup>1</sup> the court DENIES Mr. Yallup's motion.

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<sup>1</sup> After reviewing the parties' briefs, the court concludes that oral argument would not aid in its disposition of Mr. Yallup's motion.

## II. BACKGROUND

Mr. Yallup was charged with three counts of assaulting a federal officer with a firearm in violation of 18 U.S.C. § 111(b), three counts of brandishing a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii), and one count of possessing a firearm as a felon in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(8). (Superseding Indictment (Dkt. # 48).) On June 18, 2024, Mr. Yallup pled guilty to Count 1 in the Superseding Indictment for assault on a federal officer with a firearm in violation of 18 U.S.C. § 111(b). (*See generally* Plea Agreement (Dkt. # 94); 6/18/24 Min. Entry (Dkt. # 93).) The Government agreed to dismiss the remaining six counts in the Superseding Indictment and “not to bring additional charges against Defendant based on information in its possession at the time of th[e] Plea Agreement that arise from conduct that is either charged in the Superseding Indictment or identified in discovery produced in this case[.]” (Plea Agreement at 7.) During the hearing, Mr. Yallup indicated that he wanted to speak with his attorney, and the two conferred in private for approximately twenty minutes. Mr. Yallup informed the court that he wished to proceed with the plea hearing and calmly and competently answered the court’s questions. The court accepted Mr. Yallup’s plea and set sentencing for September 17, 2024. (*See* 6/21/24 Order (Dkt. # 95).)

On September 10, 2024, Mr. Yallup filed a motion to withdraw his guilty plea. (Mot.) Mr. Yallup “maintains that he was coerced and threatened by the government to plead guilty in this matter” and further believes that the Government’s investigation of

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1 him for a new charge of murder requires the court to allow him to withdraw his plea. (*Id.*  
2 at 3-4.) Mr. Yallup's motion is now ripe for review.

### 3 III. ANALYSIS

#### 4 A. Legal Standard

5 A defendant may withdraw a plea of guilty after the court accepts the plea, but  
6 before it imposes a sentence, if the defendant can show a "fair and just reason for  
7 requesting the withdrawal." Fed. R. Crim. P. 11(d)(2)(B). "A defendant does not always  
8 have the right to withdraw a plea because the decision to allow withdrawal . . . is solely  
9 within the discretion of the district court." *United States v. Nostratis*, 321 F.3d 1206,  
10 1208 (9th Cir. 2003). "The defendant has the burden to show a fair and just reason for  
11 withdrawal of a plea." *Id.*

12 The "fair and just reason" standard does not allow the defendant to withdraw his  
13 guilty plea "simply on a lark." *United States v. Hyde*, 520 U.S. 670, 676 (1997). "The  
14 guilty plea is not a placeholder that reserves [the defendant's] right . . . unless or until a  
15 preferable alternative later arises." *United States v. Ensminger*, 567 F.3d 587, 593 (9th  
16 Cir. 2009). "Once the plea is accepted, permitting withdrawal is, as it ought to be, the  
17 exception, not an automatic right." *Id.* "Fair and just reasons for withdrawal include  
18 inadequate Rule 11 plea colloquies, newly discovered evidence, intervening  
19 circumstances, or any other reason for withdrawing the plea that did not exist when the  
20 defendant entered his plea." *United States v. Ortega-Ascanio*, 376 F.3d 879, 883 (9th  
21 Cir. 2004) (citations omitted).

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1 **B. Mr. Yallup's Motion**

2 Mr. Yallup makes four arguments in support of his motion to withdraw his guilty  
3 plea: (1) he “was coerced and threatened by the government to plead guilty”; (2) the  
4 Government breached the plea agreement by investigating a new charge of murder  
5 against Mr. Yallup; (3) a fair and just reason to withdraw the plea exists because a  
6 murder conviction “would be impacted by the guilty plea in this case, i.e., an increase in  
7 the Offender Score and Criminal History Category”; and (4) he did not “knowingly”  
8 plead guilty because “he was not informed of the [murder] investigation prior to the entry  
9 of his plea.” (Mot. at 3-4; *see also* Yallup Decl. (Dkt. # 103) ¶ 4 (declaring that officers  
10 in the U.S. Marshals Service told Mr. Yallup that if he “ma[d]e it hard for them, they  
11 w[ould] make it hard for [him]”).) Mr. Yallup’s arguments are meritless, and the court  
12 rejects each in turn.

13 First, Mr. Yallup’s conduct and answers to the court’s questions during the plea  
14 hearing belie his assertion that he was threatened. Mr. Yallup never told the court he was  
15 or felt threatened, and the court gave Mr. Yallup time to speak with his attorney during  
16 the hearing to ensure that he was comfortable proceeding with his plea of guilty. Besides  
17 Mr. Yallup’s own eleventh-hour assertion, there is no evidence or factual basis to  
18 demonstrate any reasonable belief for these alleged threats.

19 Second, the Government did not breach the plea agreement by investigating Mr.  
20 Yallup for a new charge of murder. Even if the Government was in possession of  
21 information concerning the alleged murder at the time of the plea hearing, Mr. Yallup has  
22 failed to show that the information allegedly implicating him in a murder arose from

1 conduct that was charged in this case or identified in discovery produced in this case.

2 (*See generally* Mot.; Plea Agreement at 7.)

3 Third, the fact that Mr. Yallup's plea in this case may impact the guideline range  
4 for future crimes he commits does not constitute a fair and just reason to withdraw the  
5 plea. Mr. Yallup provides no case law in support of his argument, and the court is aware  
6 of none. Mr. Yallup signed the plea knowing the Government could charge him with  
7 future crimes, and this argument is therefore baseless.


8 Fourth, nothing in the plea agreement required the Government to disclose to Mr.  
9 Yallup all of the crimes it was investigating him for at the time of the plea. (*See*  
10 *generally* Plea Agreement.) Again, Mr. Yallup provides no case law in support of his  
11 unfounded argument.

12 In sum, Mr. Yallup has fallen well short of establishing a fair and just reason to  
13 withdraw his guilty plea, and the court therefore denies his motion.

#### 14 IV. CONCLUSION

15 For the foregoing reasons, the court DENIES Mr. Yallup's motion to withdraw his  
16 guilty plea (Dkt. # 102). Sentencing will take place on October 24, 2024 at 10:30 a.m. in  
17 Yakima.

18 Dated this 9th day of October, 2024.

19   
20 JAMES L. ROBART  
21 United States District Judge  
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